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UNCLAS GUATEMALA 000431

SIPDIS

DEPT FOR EB/IPC WILSON, DEPT PLS PASS TO USTR BPECK, DOC
KSCHLEGELMILCH, USPTO JURBAN/DLASHLEY-JOHNSON, AND LOC
STEPP.

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#) [WHA](#)

SUBJECT: SPECIAL 301 REVIEW

REF: A. SECSTATE 29549

[B](#). NATIONAL TRADE ESTIMATE

[1](#)1. Summary: Guatemala recently concluded negotiations of the US - Central American Free Trade Agreement (CAFTA), which includes a strong chapter on IPR. The obligations undertaken in the agreement, along with commitments of the new government, should strengthen Guatemala's weak enforcement of IPR protections. Renewed industry support for efforts should help to fend off further challenges to Guatemala's relatively strong legislative framework. Post recommends that Guatemala not be placed on the Special 301 list. End Summary.

Updates to the National Trade Estimate

[1](#)2. Legislation passed in 2003 improved IPR legislation to levels similar to those applied in the United States. The new Berger administration, which took office in January 2004, has indicated its interest in further strengthening IPR protection. Pharmaceutical and agricultural chemical research laboratories, in cooperation with the U.S. and some European embassies, have worked effectively to counter efforts by domestic copiers of protected products to undermine Guatemala's legislation through legal and legislative challenges. The Constitutional Court rejected in February 2004 the outstanding legal challenge to the 2003 legislation. Entry into force of the CAFTA will provide a strong legal obstacle to further efforts to degrade the protections provided by law.

[1](#)3. Enforcement remains the weak link in Guatemala's IPR protection. Pirated material, particularly software, optical media and trademark violating products are still widely and openly available. Enforcement efforts have been hampered primarily by a lack of resources and a lack of will within the Public Ministry, which is responsible for the prosecution of criminal offenses. The GOG reportedly still uses pirated software in many of its offices. However, the new Minister of Economy, who oversees the national IPR registry, has committed to catalogue and properly license software within his ministry and to promote similar action by his cabinet colleagues. The new government is also eager to root out the organized contraband and smuggling rings that have infiltrated the tax and customs administrations and that control much of the traffic in pirated goods.

Recommendation

[1](#)4. Post recommends that Guatemala not be placed on the Special 301 list. Nonetheless, we are aware that enforcement is weak and needs to be made a priority by the new administration. There is substantial optimism in the local IPR community that enforcement efforts and capabilities will improve with the new government's interest in successful CAFTA implementation and tackling organized crime and corruption surrounding the contraband issue.

HAMILTON